

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

GILBERTO PEREIRA BRITO,
FLORENTIN AVILA LUCAS, and JACKY
CELICOURT, individually and on behalf of
all those similarly situated,

Plaintiffs-Petitioners,

v.

WILLIAM BARR, et al.,

Defendants-Respondents.

Case No. 19-11314-PBS

FILED UNDER SEAL

AFFIDAVIT OF SIDRA VITALE, ESQ.
WITH REGARD TO GILBERTO PEREIRA BRITO

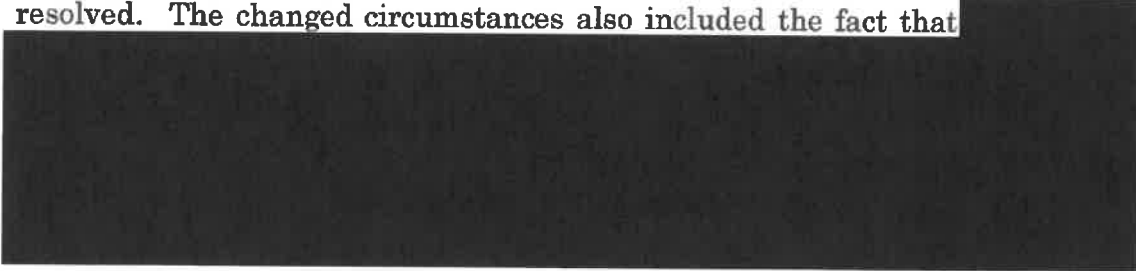
1. I am an immigration attorney and have been practicing immigration law since 2007. My law office is located in Quincy, Massachusetts.
2. I represent Gilberto Pereira Brito in proceedings before the Boston Immigration Court and in other immigration matters. I began working with Mr. Pereira Brito and his family in 2016. This affidavit is being prepared based on my personal knowledge and my work on Mr. Pereira Brito's case, including a review of various documents relating to it. All documents attached as exhibits to this declaration are true and accurate copies.
3. Mr. Pereira Brito was born in Brazil in 1979. *See* Ex. A (passport).
4. Mr. Pereira Brito entered the United States in April 2005 and was apprehended shortly thereafter. He was released on personal recognizance and given a putative Notice to Appear. *See* Ex. B (putative NTA). However, the putative Notice to Appear did not provide him with the date, time, and place of his scheduled hearing, but rather purported to order him to appear at the JFK Federal Building on June 8, 2005, at 1:30 a.m., when the immigration court was not in session and no hearing was scheduled. *See id.* A removal order entered *in absentia*, dated June 9, 2005. *See* Ex. C (June 9, 2005 Order).

5. Mr. Pereira Brito lives in Brockton, Massachusetts, with his wife Darcy and three children, ages 10 years old, 4 years old, and 11 months old. *See* Exs. D (marriage certificate), E (birth certificate for [REDACTED] age 10), F (birth certificate for [REDACTED] age 4), G (birth certificate for [REDACTED] age 11 months). Mr. Pereira Brito's wife and children are all citizens of the United States.
6. Mr. Pereira Brito's wife is disabled and cannot work. *See* Ex. H (compiled Social Security Administration and medical documentation), Ex. I (aff't of Darcy Pereira Brito). Her medical problems include PTSD, panic disorder, and various complications from a prior surgery that make her feel constantly weak and sick. *See* Ex. I (aff't of Darcy Pereira Brito). Mr. Pereira Brito's family depends on him for financial support, and, without him, they are unable to pay their rent and other expenses. *See id.*
7. In 2007, Mr. Pereira Brito was pulled over in Dorchester, Massachusetts, and charged with unlicensed operation of a motor vehicle and operation of a motor vehicle under the influence of alcohol. *See* Ex. J (2007 docket). He was released on personal recognizance at arraignment. *See id.* In August 2008, he admitted sufficient facts, and the case was continued without a finding until July 2009.¹ *See id.*
8. In May 2009, Mr. Pereira Brito was charged in Hingham, Massachusetts, with driving after suspension of his license. *See* Ex. K (2009 docket). He was released on personal recognizance at arraignment. *See id.* Mr. Pereira Brito misunderstood the court's instructions that he was "all set" and was incorrectly under the impression that the case was resolved. *See* Ex. L (Pereira Brito aff't). It appears a default entered in June 2009, although the Commonwealth took no further action. *See* Ex. K (2009 docket). It also appears that this charge triggered a violation of probation notice in the original 2007 case. *See* Ex. J (2007 docket). But the notice was mailed to the wrong address, and Mr. Pereira Brito was not aware of it. *See* Exs. M (violation of probation notice sent to "Water Street"), L (Pereira Brito aff't explaining he lived on "W. Water Street" at the relevant time and never received the violation of probation notice).

¹ My understanding based on a review of police records is that police also initially alleged that a marijuana cigarette was found in the vehicle (which had three passengers when it was pulled over, in addition to Mr. Pereira Brito). However, the possession charge against Mr. Pereira Brito was later dropped at the request of the Commonwealth. *See* Ex. J (2007 docket). It appears that Mr. Pereira Brito was also charged with a civil violation for failure to keep right, but was adjudicated "not responsible." *See id.*


9. Having thoroughly investigated the facts and circumstances of this case, I have determined that Mr. Pereira Brito has not been arrested, and has not been charged with or convicted of any crimes, since May 2009.
10. Prior to being arrested by ICE, Mr. Pereira Brito disclosed his location to the government and began the process to correct his immigration status. In June 2017, I filed a Form I-130 on behalf of Mr. Pereira Brito and his wife, which was approved in 2018. *See* Ex. N (I-130 approval notice). This approval is the first step in a process that would allow Mr. Pereira Brito to become a lawful permanent resident of the United States by virtue of his marriage to Darcy, who is a U.S. citizen.
11. ICE arrested Mr. Pereira Brito at his home on March 3, 2019.
12. After Mr. Pereira Brito was arrested, I filed a motion to reopen his removal proceeding (*i.e.*, to vacate the prior removal order that entered *in absentia* without his knowledge). That motion was granted by the immigration court on or about March 18, 2019, based on “apparent lack of notice” to Mr. Pereira Brito of the prior proceeding. *See* Ex. O (March 18, 2019 Order).
13. In the immigration court, Mr. Pereira Brito intends to apply for relief from removal, including cancellation of removal, a defense to removal that is available to certain individuals who have been in the United States for more than 10 years and have U.S. citizen family members who would suffer an “exceptional and extremely unusual hardship” if the noncitizen were removed.²
14. On April 4, 2019, Mr. Pereira Brito received a bond hearing before an immigration judge in the Boston Immigration Court pursuant to 8 U.S.C. § 1226(a). I represented him at this hearing. The immigration judge required that, in order to be released on bond, Mr. Pereira Brito bear the burden to prove that he is not a danger or flight risk.
15. In connection with that bond hearing, I submitted information including records of Mr. Pereira Brito’s marriage and the birth of his children, Darcy’s affidavit, certain medical and Social Security Administration documentation relating to Darcy’s disability, the form I-130 approval, an application for cancellation of removal, the defective putative NTA from 2005, letters of support from community members, and a photograph of Mr. Pereira Brito’s children. *See* Exs. B, D, E, F, G, H, I, N, P, Q, & R.

² Also, as described above, Mr. Pereira Brito is the beneficiary of an approved I-130, Petition for Alien Relative, filed by his wife. That petition could become the basis for an application for lawful permanent resident status at a future date.

16. At the bond hearing, Mr. Pereira Brito learned that his 2007 and 2009 cases were still open.
17. The immigration judge denied bond. In a subsequent explanatory decision, the immigration judge acknowledged that Mr. Pereira Brito “has been in the United States for over a decade, has a fixed address, and has existing family ties.” *See* Ex. S (bond memorandum). However, the court nevertheless ruled that Mr. Pereira Brito “did not meet his burden to demonstrate that he neither poses a danger to the community nor is a risk of flight,” based on the decade-old cases and his purported failure to demonstrate that “he has a strong case for eligibility for relief from removal.” *See id.*
18. Mr. Pereira Brito appealed the decision denying him release on bond to the BIA on May 3, 2019. *See* Ex. T (notice of appeal). The appeal remains pending.
19. While detained, Mr. Pereira Brito has engaged criminal defense counsel to help him resolve the two old cases. The violation of probation proceeding in the 2007 case has now been dismissed, and the case is therefore resolved. *See* Ex. J (2007 docket). The 2009 case was scheduled for a hearing on June 6, 2019, but Mr. Pereira Brito was not transported from ICE detention to the state court. A new hearing in that case is scheduled for June 17, 2019, at which time it will likely be resolved (assuming Mr. Pereira Brito is transported to court).
20. On May 30, 2019, I filed a motion for a new bond hearing based on a change in circumstances. *See* Ex. U (motion and all exhibits). The changed circumstances included the fact that Mr. Pereira Brito’s 2007 case is now resolved. The changed circumstances also included the fact that 
21. On June 10, 2019, the immigration court denied Mr. Pereira Brito’s motion for a new bond hearing based on changed circumstances. *See* Ex. V (June 10, 2019 Order). In that order, the immigration judge states that Mr. Pereira Brito’s “circumstances have not changed materially since the last bond hearing.” *See id.*
22. Mr. Pereira Brito’s immigration proceedings have been pending since March and will likely continue for some time. His next hearing is currently scheduled for June 28, 2019.

23. Mr. Pereira Brito has been held in immigration detention continuously since March 3, 2019. Without an adequate bond hearing, Mr. Pereira Brito will likely remain detained throughout the pendency of these proceedings. He has already been in jail for more than three months.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


Sidra Vitale

6/15/2019
Date

Exhibit A

Darcy Pereira Brito
Agency ID [REDACTED]



PASSAPORTE
PASSPORT

REPÚBLICA
FEDERATIVA DO BRASIL
Pereira Brito
Gilberto

REPÚBLICA FEDERATIVA DO BRASIL

Este passaporte deve ser utilizado para fins
de viagem internacional.
Ce passaport doit être utilisé
seulement pour les voyages
internationaux.
This passport must be used
except where the bearer is under no other
obligation to use another passport.
Este passaport só deve ser utilizado para
viagem internacional.

Le passaport doit être utilisé
seulement pour les voyages
internationaux.

Exhibit B

U. S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: [REDACTED]
Case No: **MSC0504000203**
FIN #: **16062087**

In the Matter of:

Respondent: **Gilberto PEREIRA-Brito**

currently residing at:

**740 WASHINGTON ST
STROUPTON MASSACHUSETTS 02072**

(Number, street, city state and ZIP code)

- ☐ 1. You are an arriving alien.
☒ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

See Continuation Page Made a Part Hereof

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

See Continuation Page Made a Part Hereof

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☒ Section 235(b)(1) order was vacated pursuant to: ☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: **JFK Federal Building 15 New Sudbury Street Room 320 Boston MASSACHUSETTS 02220**

ON June 5, 2005 at 01:30 a.m. to show why you should not be removed from the United States based on the charge(s) set forth above.
(Date) (Time)

DARIN LORCH
SUPERVISOR BORDER PATROL AGENT

(Signature and Title of Issuing Officer)

Date: April 11, 2005

Rio Grande City, Texas
(City and State)

See reverse for important information

Form I-862 (Rev. 3/22/99)M

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Exhibit C

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203-0002

In the Matter of:
PEREIRA-BRITO, GILBERTO

Case No. 1 [REDACTED]

Docket: BOSTON, MASSACHUSETTS

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Jun 8, 2005, at 1:30 P.M., pursuant to proper notice, the above entitled matter was scheduled for a hearing before an Immigration Judge for the purpose of hearing the merits relative to the respondent's request for relief from removal. However,

- (☒) the respondent was not present.
- (☐) the respondent's representative was present; however, the respondent was not present.
- (☐) neither the respondent nor the respondent's representative was present.

Therefore, in the absence of any showing of good cause for the respondent's failure to appear at the hearing concerning the request for relief, I find that the respondent has abandoned any and all claim(s) for relief from removal.

Wherefore, the issue of removability having been resolved, it is HEREBY ORDERED for the reasons set forth in the Immigration and Naturalization Service charging document that the respondent be removed from the United States to BRAZIL.

Edward I. Shapiro
EDWARD I. SHAPIRO
Immigration Judge
Date: Jun 9, 2005

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ☒ ALIEN ☐ ALIEN (C) Custodial Officer ☒ Alien's ATT/REP ☐ INS
DATE: 6/13/05 BY: COURT STAFF *[Signature]*
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

Exhibit D

CERTIFICATE OF MARRIAGE				Registered No. <u>407</u>
1 Place of Marriage City or Town <u>Brockton</u> (Do not enter name of village or section of city or town)		2 Date of Marriage <u>Oct. 20, 2013</u> (Month) (Day) (Year)		Intention No. <u>441</u>
3 FULL NAME PARTY A <u>Gilberto Pereira Brito</u>		11 FULL NAME PARTY B <u>Darcy Lynne France</u>		
3A SURNAME AFTER MARRIAGE <u>Pereira Brito</u>		11A SURNAME AFTER MARRIAGE <u>Pereira Brito</u>		
4 DATE OF BIRTH	5 OCCUPATION <u>Remodeler</u>	12 DATE OF BIRTH	13 OCCUPATION <u>At Home</u>	
6 RESIDENCE NO. & ST. <u>[REDACTED]</u> CITY <u>Brockton</u> ST. <u>MA</u> ZIP CODE <u>02301</u>		14 RESIDENCE NO. & ST. <u>[REDACTED]</u> CITY <u>Brockton</u> ST. <u>MA</u> ZIP CODE <u>02301</u>		
7 NUMBER OF MARRIAGES (1st, 2nd, etc.) <u>2nd</u>	7A WIDOWED OR DIVORCED	15 NUMBER OF MARRIAGES (1st, 2nd, 3rd, etc.) <u>1st</u>	15A WIDOWED OR DIVORCED	
8 PLACE OF BIRTH <u>Batatinga</u> (City or town) (State or country)		16 BIRTHPLACE <u>Stoughton</u> (City or town) (State or country)		
9 NAME OF MOTHER/PARENT		17 NAME OF MOTHER/PARENT		
10 NAME OF FATHER/PARENT		18 NAME OF FATHER/PARENT		
19 THE INTENTION OF MARRIAGE by the above-mentioned persons was duly entered by me in the records of the Community of <u>BROCKTON</u> according to law, this <u>23rd</u> day of <u>SEPTEMBER</u> , 20 <u>13</u>				
COURT WAIVER Issued <u>September 26, 2013</u> by <u>Anthony J. Zeoli</u> AGE ORDER (Month) (Day) (Year) (City or Town) (Clerk or Registrar)				
20 I HEREBY CERTIFY that I solemnized the marriage of the above-named persons at No. <u>278 Belmont</u> St. <u>Brockton</u> on <u>October 20</u> , 20 <u>13</u> . (If marriage was solemnized in a church, give its NAME instead of street and number) Signature <u>Nancy Krause</u> Justice of the Peace (Print or type name) (Member of the Clergy, Priest, Rabbi, Imam, or Justice of the Peace, etc.) Address <u>11 Winona St Brockton, MA 02301-5035</u>				
21 Certificate recorded by city or town clerk <u>October 24, 2013</u> (Month) (Day) (Year) CLERK OR REGISTRAR <u>Anthony J. Zeoli</u>				
22 PARTY A SEX: <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE		23 PARTY B SEX: <input checked="" type="checkbox"/> MALE <input type="checkbox"/> FEMALE		

I certify that I am the City Clerk of Brockton, MA and I have Custody of Records of Births, Marriages and Deaths required by law to be kept in My office, I certify that the above is a true copy from said records.
WITNESS MY HAND AND SEAL OF THE CITY OF BROCKTON THIS 6th DAY OF NOVEMBER 2013

Anthony J. Zeoli
ANTHONY J. ZEOLI, CITY CLERK

FEE \$20.00

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Exhibit E



Commonwealth of Massachusetts

CERTIFICATE OF BIRTH

FROM THE RECORDS OF BIRTHS IN THE
TOWN OF WEYMOUTH, MASSACHUSETTS

Date of Birth

Full Name of Child

Sex, and if Twin

Place of Birth

Name of Father

Maiden Name of Mother

Residence of Parents

Occupation of Father

Occupation of Mother

Birthplace of Father

Birthplace of Mother

Date of Record

FEMALE

WEYMOUTH, MA

GILBERTO PEREIRA BRITO

DARCY LYNNE FRANCE

ROCKLAND, MA

IPATINGA MG BRAZIL

STOUGHTON, MA

January 23, 2009

I, the undersigned, hereby certify that I am clerk of the Town of Weymouth; that as such I have custody of the records of births required by law to be kept in my office,

And I do hereby certify that the foregoing is a true copy from the said records.

Witness my hand and seal of said town of Weymouth on this

8th

day of

January, 2013

PLACE
SEAL
HERE

Kathleen G. O'Neil

Town Clerk

YEAR 2009
VOL. 2009
PAGE
NUMBER 156

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Exhibit F

COPY OF RECORD OF BIRTH

REGISTERED NUMBER: 3624
STATE FILE NUMBER: 071424

CHILD

NAME: [REDACTED]
SEX: FEMALE PLURALITY: SINGLE
DATE OF BIRTH: [REDACTED]
PLACE OF BIRTH: WELMOUTH, MA

MOTHER/PARENT

NAME: DARCY LYNNE PEREIRA BRITO
SURNAME AT BIRTH OR ADOPTION: FRANCE
BIRTHPLACE: STOUGHTON, MA
DATE OF BIRTH: [REDACTED]

FATHER/PARENT

NAME: GILBERTO PEREIRA BRITO
SURNAME AT BIRTH OR ADOPTION: PEREIRA BRITO
BIRTHPLACE: IPATINGA, MINAS GERAIS, BRAZIL
DATE OF BIRTH: [REDACTED]

AT-BIRTH RESIDENCE: BROCKTON, MA

DATE OF RECORD: DECEMBER 30, 2014

DATE ISSUED: AUGUST 27, 2015

I, the undersigned, hereby certify that I am the Clerk of the City of Brockton; that as such I have custody of the records of birth, marriage, and death required by law to be kept in my office; and I do hereby certify that the above is a true copy from said records, as held in the Commonwealth's central vital records information repository.

Anthony D. Zoli

Clerk
City of Brockton

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Exhibit G



Commonwealth of Massachusetts
Registry of Vital Records and Statistics

RECORD OF BIRTH

REGISTERED NUMBER: 10050
STATE FILE NUMBER: 034518

CHILD

NAME: [REDACTED]
SEX: MALE
DATE OF BIRTH: [REDACTED] PLURALITY: SINGLE
PLACE OF BIRTH: BOSTON, MA TIME: [REDACTED]

MOTHER/PARENT

NAME: DARCY LYNNE PEREIRA BRITO
SURNAME AT BIRTH OR ADOPTION: FRANCE
BIRTHPLACE: STOUGHTON, MA
DATE OF BIRTH: [REDACTED]

FATHER/PARENT

NAME: GILBERTO — PEREIRA BRITO
SURNAME AT BIRTH OR ADOPTION: PEREIRA BRITO
BIRTHPLACE: SPATINGA MG, BRAZIL
DATE OF BIRTH: [REDACTED]

AT-BIRTH RESIDENCE: BROCKTON, MA

DATE OF RECORD: JULY 12, 2018

DATE ISSUED: OCTOBER 03, 2018

I, the undersigned, hereby certify that I am the Clerk of the City of Brockton; that as such I have custody of the records of birth, marriage, and death required by law to be kept in my office; and I do hereby certify that the above is a true copy from said records, as held in the Commonwealth's central vital records information repository.

Anthony J. Zesli

Clerk
City of Brockton

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Exhibit H

Exhibit Intentionally Excluded

Exhibit I

AFFIDAVIT OF DARCY PEREIRA BRITO

I, Darcy Pereira Brito, being duly sworn, depose and say:

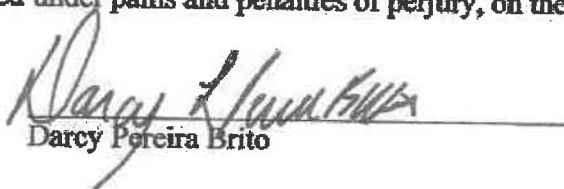
1. My name is Darcy Pereira Brito, my maiden name is Darcy France. I am married to Gilberto Pereira Brito. I am a U.S. citizen, born in Stoughton, MA in [REDACTED]
2. Gilberto's been in the U.S. since 2005. We got married October 20, 2013 but were a couple for several years before then. We live together at [REDACTED]
We've lived together over 10 years and have three children, age 10, 4, and about 8 months.
3. We met in about April or May 2007, and became a couple July 2007. We've been together ever since. He's never left the U.S. in the time that I've known him, he's been living here in the U.S. all this time. To my knowledge, he's never been in trouble with the police, either.
4. Our three children are [REDACTED]
[REDACTED]
5. My husband is the breadwinner for the family, working in construction and painting.
6. I do not work. I'm a stay at home mom. I collect SSDI benefits and have for about 2 years. I have post-traumatic stress disorder (PTSD) and panic disorder with depression, and complications from gastric bypass, which makes me weak and sick constantly, so I can't hold a full-time job.
7. Right now, while my husband is in custody, I'm meeting with my therapist twice a week, once in person and once later in the week by phone. She comes to my house to treat me. Her name is Kathryn Wells, she's with South Bay Community Resources. She's been my therapist for 8 or 9 years.
8. Prior to my husband being taken into custody, I was seeing her biweekly, that's every two weeks. I need her assistance so much more because my husband is not with me.
9. I feel lost and alone, and I don't know how I can pay for diapers for the baby if my husband isn't

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released. I can't pay rent on my disability – that's \$1150/mo, and I get hundreds less than that in SSDI benefits. The math simply doesn't work without Gilberto. I need him to come home right away.

10. Every other Friday there's a morning mingle at my 4-year-old daughter's school, and Gilberto is usually the only man there, which I find pretty funny, but also kind of sad, dads want to be with their kids but the expectation is that only moms will go. The mingles are to get families to know each other. He also recently signed up for Daddy and Me classes for our 4-year old daughter, but he can't go while he's in detention, so he's missing the classes right now.
11. Our children are really upset, their lives have been completely disrupted. I've been too depressed to go out and do anything since Gilberto was detained, so there's no more mingles or anything other than just going to school. I'm able to get the kids to school and feed them, but I feel like I'm holding on by my fingernails. I need my husband.
12. Gilberto's been a rock, because of him, I was able to get off my medications. I've been taking one medication or another practically my whole life, and I've been able to transition off with his help and support. I need his help to keep it that way.
13. Gilberto's a family man, and we are a tight-knit family. It's like there's a hole in the family with him gone. Even our landlord is asking after him, and not just because rent is due next week.
14. Since Gilberto was detained, I have been overwhelmed with people messaging me on Facebook, text messaging, calling me, to find out what's going on, is he OK, when is he coming home to us. I must have gotten 300 messages of one kind or another since he's been detained. He's valued by his friends, and of course missed desperately by his family.

Signed under pains and penalties of perjury, on the 28th day of March, 2019.


Darcy Pereira Brito

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Exhibit J

DEFENDANT NAME AND ADDRESS Gilberto A Lourenco 98 B W Water St Rockland, MA 02370		DOB [REDACTED]	GENDER Male	COURT NAME & ADDRESS BMC Dorchester 610 Washington Street Dorchester, MA 02122-0001															
DATE COMPLAINT ISSUED 04/09/2007		PRECOMPLAINT ARREST DATE 04/07/2007																	
FIRST FIVE OFFENSE COUNTS <table border="1"> <thead> <tr> <th>COUNT</th> <th>CODE</th> <th>OFFENSE DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>88/4</td> <td>KEEP RIGHT ON HILL/OBSTRUCTED VIEW, FL</td> </tr> <tr> <td>2</td> <td>90/10/A</td> <td>UNLICENSED OPERATION OF MV c90 §10</td> </tr> <tr> <td>3</td> <td>90/24/J</td> <td>OUHQUOR OR .08% c90 §24(1)(e)(X1)</td> </tr> <tr> <td>4</td> <td>94C/34/G</td> <td>DRUG, POSSESS CLASS D c94C §34</td> </tr> </tbody> </table>					COUNT	CODE	OFFENSE DESCRIPTION	1	88/4	KEEP RIGHT ON HILL/OBSTRUCTED VIEW, FL	2	90/10/A	UNLICENSED OPERATION OF MV c90 §10	3	90/24/J	OUHQUOR OR .08% c90 §24(1)(e)(X1)	4	94C/34/G	DRUG, POSSESS CLASS D c94C §34
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DEFENSE ATTORNEY <i>Atty. Lifford</i>		OFFENSE CITY/TOWN Boston		POLICE DEPARTMENT SP South Boston															
DATE & JUDGE 4-10-07	DOCKET ENTRY	DATE & JUDGE 11/27/07 <i>McConnell</i>	FEES IMPOSED																
<input type="checkbox"/> Attorney appointed (BJC R. 2-10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy Terms of release set: <input type="checkbox"/> PR <input type="checkbox"/> Bnd <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)		Counsel Fee (211D §2A) 150 / 15 hr <input type="checkbox"/> WAIVED Counsel Contribution (211D §2) <input type="checkbox"/> WAIVED Default Warrant Fee (276 § 30(1)) <input type="checkbox"/> WAIVED Default Warrant Arrest Fee (276 § 30 (2)) <input type="checkbox"/> WAIVED Probation Supervision Fee (276 § B7A) <input type="checkbox"/> WAIVED Bail Order Forfeited																	
9-10-07	Arraigned and advised: <i>Payne J.</i> <input checked="" type="checkbox"/> Potential of bail revocation (276 §58) <input type="checkbox"/> Right to bail to review (276 §56) <input type="checkbox"/> Right to drug exam (111E § 10) Advised of right to jury <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive Advised of trial rights as pro se (Dist. Ct. S. 200.14) Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)	15/1/08 \$150 cash 41349 4105000739																	
SCHEDULING HISTORY																			
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP														
1	04/09/2007	Arraignment	<input type="checkbox"/> Held <input type="checkbox"/> Conf'd	4/9/07 DF Warrant	Miller														
2	11-27-07	PTH	<input type="checkbox"/> Held <input checked="" type="checkbox"/> Conf'd	11/27/07 - PTH	McConnell 6th-1228														
3			<input type="checkbox"/> Held <input checked="" type="checkbox"/> Conf'd	4/22/08 JT / motion Supp															
4	8-6-08	4-1V	<input type="checkbox"/> Held <input checked="" type="checkbox"/> Conf'd	7/17/08 JT	Shorn. 7th														
6			<input type="checkbox"/> Held <input checked="" type="checkbox"/> Conf'd	8/25/08 JT / status															
8	8-25-08	IV	<input type="checkbox"/> Held <input checked="" type="checkbox"/> Conf'd	7-24-09 Re	Miller 5th 10:31-11:54														
7	5-7-09	motion	<input type="checkbox"/> Held <input checked="" type="checkbox"/> Conf'd	5-22-09 PSH	Brown 1st 10:53														
9			<input type="checkbox"/> Held <input type="checkbox"/> Conf'd																
10			<input type="checkbox"/> Held <input type="checkbox"/> Conf'd																
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Probable Hearing CTR = Discovery compliance & jury selection STR = Status Trial JTH = Jury Trial PCH = Probable cause hearing MOT = Motion hearing BPR = Status review BPR = Status review of probable cause PCH = Probable cause hearing CTR = Discovery compliance & jury selection STR = Status Trial JTH = Jury Trial PCH = Probable cause hearing MOT = Motion hearing BPR = Status review BPR = Status review of probable cause PCH = Probable cause hearing CTR = Discovery compliance & jury selection STR = Status Trial JTH = Jury Trial PCH = Probable cause hearing MOT = Motion hearing BPR = Status review BPR = Status review of probable cause PCH = Probable cause hearing CTR = Discovery compliance & jury selection STR = Status Trial JTH = Jury Trial PCH = Probable cause hearing MOT = Motion hearing BPR = Status review																			
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK X		TOTAL NO. OF PAGES	ON (DATE)														

7

COUNT / OFFENSE		DISPOSITION DATE AND JUDGE			
1 KEEP RIGHT ON HILL/OBSTRUCTED VIEW, FL * c88 §4		8-25-08 Miller, J. [Signature]			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input checked="" type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §280 warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINANCEMENT <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION		COSTS <input type="checkbox"/> OWI §240 FEE <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
FINDING <input type="checkbox"/> Guilty <input checked="" type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input checked="" type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding unit: <input type="checkbox"/> Defendant placed on probation unit: <input type="checkbox"/> Risk/Need or OWI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (278 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see conf'd page)		JUDGE _____ DATE _____			
2 UNLICENSED OPERATION OF MV c90 §10		8-25-08 Miller, J. [Signature]			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input checked="" type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §280 warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINANCEMENT <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION		COSTS <input type="checkbox"/> OWI §240 FEE <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input checked="" type="checkbox"/> Sufficient facts found but continued without a finding unit: <input type="checkbox"/> Defendant placed on probation unit: <input type="checkbox"/> Risk/Need or OWI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (278 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see conf'd page)		JUDGE _____ DATE _____			
3 OUI-LIQUOR OR .08% c86 §24(1)(a)(1)		8-25-08 Miller, J. [Signature]			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input checked="" type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §280 warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINANCEMENT <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION		COSTS <input type="checkbox"/> OWI §240 FEE <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
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FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see conf'd page)		JUDGE _____ DATE _____			

CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME		0787CR002231	
COUNT / OFFENSE 4 DRUG, POSSESS CLASS D c94C §34		DISPOSITION DATE AND JUDGE 82508 Miller, J. (10)			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 276 §29D warning <input type="checkbox"/> Bench Trial <input checked="" type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINANCEMENT <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION		COSTS <input type="checkbox"/> VAW ASSESSMENT <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding unit: <input type="checkbox"/> Defendant placed on probation unit: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) unit: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE		JUDGE DATE			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 276 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINANCEMENT <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION		COSTS <input type="checkbox"/> VAW ASSESSMENT <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding unit: <input type="checkbox"/> Defendant placed on probation unit: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) unit: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE		JUDGE DATE			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 276 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINANCEMENT <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION		COSTS <input type="checkbox"/> VAW ASSESSMENT <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding unit: <input type="checkbox"/> Defendant placed on probation unit: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) unit: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE		JUDGE DATE			



10

NO.	DATE	DOCKET ENTRIES
7-27-08		INTERPRETER REQUESTED Ret: 8-25-08. JP/
8-25-08		Last drunk @ private home Miller (JP)
8-27-08		ABSTRACT SENT TO REGISTRY JP/
5-14-09		Advised of the signed by PO Lunnier and continued for PPH 5-27-09/Quinn
MAY 27 2009		Desmond & Issue V. Op War.
5/27/11		Warrant PPH
5-7-19		APPEARANCE OF MS. LORAN THOMAS FILED MOTION TO RELE. OF. IN ICE CUSTODY AND DEPORTATION WARNING AND ICE CUSTODY AND A NEWS TO CUREL WARRANT - AND SPOON TRIAL. (LIR)
5/7/19		Habeas to issue for A at the Plymouth County H.C. via ICE Please follow the habeas protocol as it appears on the yellow lined paper in folder (Buen)
		Bring A in on 5/22/19 (Buen) for PPH.
		Don't recall the current unit A comes in on 5/22/19
5-7-19		Habe issued to Plymouth City H of C ICE Unit, Ret. 5-22-19. ed
5/21/19		For re habeas to Plymouth County HIC under name Pereira-Barto, Gilberto AKA Lourenco, Gilberto ret 5/22/19 ^m also said Ice approved
5-21-19		Habe issued to Plymouth HOC ret 5-22-19 de
5-22-19		131 session start 1023

THE PROSECUTOR CERTIFIES THAT THIS DOCUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS SUBMITTED TO THE COURT CLERK.

FILED
MAY 22 2019
CLERK

ACRC, Morrison Atty Thomas After
 Preliminary surrender hearing probable
 cause found & waives 7 days notice
 Cause found violation of Probation chief
 revoked case dismissed Kaplan 1/18

All fees waived


5/22/19

Waiver fees

WAT

THE CLERK OF THE COURT
 COUNTY OF NEW YORK
 THIS 29th DAY OF MAY 2019
 CITATION
 ASSISTANT CLERK

Exhibit K

CRIMINAL DOCKET		DOCKET NUMBER 0958CR000832	NO. OF COUNTS 1	Trial Court of Massachusetts District Court Department		
DEFENDANT NAME AND ADDRESS Gilberto A Lourenco 296 Martha St Rockland, MA 02370		DOB [REDACTED]	GENDER Male		COURT NAME & ADDRESS Hingham District Court 28 George Washington Boulevard Hingham, MA 02043	
		DATE COMPLAINT ISSUED 05/07/2009		INTERPRETER REQUIRED Portuguese		
		PRECOMPLAINT ARREST DATE 05/07/2009				
FIRST FIVE OFFENSE COUNTS						
COUNT	CODE	OFFENSE DESCRIPTION				OFFENSE DATE
1	90/23/D	LICENSE SUSPENDED, OP MV WITH c90 §23				05/07/2009
DEFENSE ATTORNEY		OFFENSE CITY/TOWN Hanover		POLICE DEPARTMENT Hanover PD		
DATE & JUDGE	DOCKET ENTRY			DATE & JUDGE	FEES IMPOSED	
MAY - 7 2009 Hunter	<input type="checkbox"/> Attorney appointed (BJC R. 3-10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy Terms of release set: <input checked="" type="checkbox"/> PR <input type="checkbox"/> Bail <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §68A) Arraigned and advised: <input type="checkbox"/> Potential of bail revocation (276 §68) <input type="checkbox"/> Right to bail to review (276 §68) <input type="checkbox"/> Right to drug exam (111E § 10) Advised of right to jury trial: <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive Advised of trial rights as pro se (Dist. Ct. Supp.R.4) Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)				Counsel Fee (211D § 2A)(2) <input type="checkbox"/> WAIVED Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED Default Warrant Fee (276 § 30)(1) <input type="checkbox"/> WAIVED Default Warrant Arrest Fee (276 § 30 §2) <input type="checkbox"/> WAIVED Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED Bail Order Forfeited	
SCHEDULING HISTORY						
NO.	SCHEDULED DATE	EVENT	RESULT		JUDGE	TAPE START/STOP
1	05/07/2009	Arraignment	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
2	6-5-09	P.T.	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		PH	
3			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
4			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
5			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
6			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
7			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
8			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
9			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
10			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd			
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection STR = Search Writ JTH = Jury trial PCH = Probable cause hearing MOT = Motion hearing STW = Status review CRP = Status review of payments PAY = First appearance to jury selection SEN = Sentencing CWR = Conditional release hearing scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Warrant signed issued WRN = Warrant or default warrant recalled PWR = Probation revocation hearing						
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST. CLERK X			TOTAL NO. OF PAGES 3	ON (DATE) 4/29/19



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Gilberto A Lourenco		DOCKET NUMBER 0958CR000932	
COUNT / OFFENSE 1 LICENSE SUSPENDED, OP MV WITH c90 §23				DISPOSITION DATE AND JUDGE	
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 276 §28D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION VW ASSESSMENT BATTERER'S FEE OTHER		COSTS OUI §24D FEE OUI VICTIMS ASMT	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE			
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 276 §28D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT RESTITUTION VW ASSESSMENT BATTERER'S FEE OTHER		COSTS OUI §24D FEE OUI VICTIMS ASMT	
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE			
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FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE			

Data/Time Printed: 05-07-2019 14:25:35



0958CR000932

Version 2.0 - 11/08

15



14

Exhibit L

AFFIDAVIT OF GILBERTO PEREIRA BRITO

I, Gilberto Pereira Brito, being duly sworn, depose and say:

1. I did not know a default warrant was issued against me by the Dorchester Court in 2009. I followed the Dorchester Court's orders in my case. I went to my alcohol classes. I put the lessons they taught me to work. I changed my behavior so that I don't even keep alcohol in the house and haven't since that time. I also paid whatever fees they told me to. I thought my case was over.
2. I understand that the default warrant in Dorchester came from getting pulled over and sent to the Hingham Court.
3. I did not go back to the Hingham Court after I was released because they told me I was done. They said I was "all set". That meant I was done and the case was over.
4. I did not receive the notice of violation of my probation telling me to appear in Dorchester. It was sent to the wrong address, 92B Water Street, Rockland, MA 02370. My address at the time was 92B W. Water Street. I did not receive this notice. If I had, I would have gone to court.
5. At all times, I have believed my case in Hingham was over, and my case in Dorchester was over, and that I had no criminal record because my cases were dismissed.
6. If I had known earlier that either case was somehow incomplete or that a default warrant had been issued against me, I would have hired a criminal lawyer then to represent me.
7. Now that I do know, that is exactly what I have done. My criminal lawyer is Lauren Thomas, Esq.
8. She tells me both cases will be dismissed, but the Hingham case won't be heard until June.
9. I am a law-abiding person. I complied with everything the courts told me to do, if only I had gotten the notice of hearing sent to the wrong address, I would have complied with its instructions and gone to court 10 years ago as instructed.

Signed under pains and penalties of perjury,

X Gilberto Pereira Brito
Gilberto Pereira Brito

Date: 05-15-2019

Exhibit M

THE ABOVE-NAMED PROBATIONER:

YOU ARE HEREBY NOTIFIED of the following alleged violation(s) of the probation order that was issued to you in the criminal case identified above:

- ☒ You violated a criminal law of the commonwealth, namely: New arrest- 0958CR 0932
op a/k/r sus Lic
- ☐ You failed to attend or successfully complete a required program, specifically:
- ☐ You failed a required drug test, specifically:
- ☐ You failed to make a required payment, specifically:
- ☐ You failed to report as required by your probation specifically:
- ☐ Other:

I HEREBY CERTIFY THAT THIS IS A TRUE
 COPY, GIVEN UNDER MY HAND AND SEAL
 THIS 29th DAY OF MAY 2019
 CLERK-REGISTRAR
 ASSISTANT CLERK

YOU ARE HEREBY ORDERED as follows:

- ☒ YOU MUST APPEAR in THIS COURT on 5/23/09 at 9:00am, for a hearing on the
 allegation(s) listed above.
 (Date) (Time)

You are entitled to have a lawyer to represent you at the hearing, and one will be appointed if you cannot afford to hire one. Evidence will be presented against you at the hearing and you will be able to present your own evidence. Speak with your attorney before the hearing to prepare. If you fail to appear, you may be subject to arrest with or without a warrant. If the probation violation(s) alleged above is (are) proved, your probation may be modified or revoked.

- ☐ YOU MUST APPEAR in the _____ COURT
 at _____ on _____
 (Address) (Date)
- at _____ for the appointment of counsel, if necessary, and the scheduling of
 (Time)
- a hearing on the alleged probation violation(s) listed above. If you fail to appear, you may be subject to arrest with or without a warrant.

A copy of this Notice has this day been ☐ SERVED IN HAND ON ☒ MAILED FIRST CLASS TO THE
 ADDRESS OF RECORD OF the probationer named above.

5/14/09
 Date

Pascale M. Theriault
 Signature of Issuing Probation Officer

Gilberto Lourenco
726 Water Street
Rockland, Ma 02370
 PROBATIONER

Exhibit N

U.S. Citizenship and Immigration Services

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

Receipt Number SRC1790545420		Case Type 1130 - PETITION FOR ALIEN RELATIVE
Received Date 06/12/2017	Priority Date 06/12/2017	Petitioner PEREIRA BRITO, DARCY LYNNE
Notice Date 02/17/2018	Page 1 of 1	Beneficiary PEREIRA BRITO, GILBERTO

DARCY LYNNE PEREIRA BRITO
c/o SIDRA VITALE
LAW OFFICE OF SIDRA VITALE
PO BOX 692148
QUINCY MA 02269

Notice Type: Approval Notice
Section: Husband or wife of U.S. Citizen,
201(b) INA

We have mailed an official notice about this case (and any relevant documentation) according to the mailing preferences you chose on Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. This is a courtesy copy, not the official notice.

What the Official Notice Said

The above petition has been approved. As the petitioner requests, we have sent the petition to the U.S. Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. The NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. The NVC will then forward the approved petition to that consulate.

The NVC will contact the beneficiary of this petition with further information about immigrant visa processing steps.

You should allow a minimum of 30 days for U.S. Department of State processing before contacting the NVC. If you have not received any correspondence from the NVC within 30 days, you may contact the NVC by e-mail at NVCINQUIRY@state.gov. You will need to enter the USCIS receipt number from this approval notice in the subject line. In order to receive information about your petition, you will need to include in the body of the e-mail your name and date of birth, and the Applicant's (beneficiary's) name and date of birth.

THIS FORM IS NOT A VISA AND MAY NOT BE USED IN PLACE OF A VISA.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

NOTICE: Although this application or petition has been approved, USCIS and the U.S. Department of Homeland Security reserve the right to verify this information before and/or after making a decision on your case so we can ensure that you have complied with applicable laws, rules, regulations, and other legal authorities. We may review public information and records, contact others by mail, the internet or phone, conduct site inspections of businesses and residences, or use other methods of verification. We will use the information obtained to determine whether you are eligible for the benefit you seek. If we find any derogatory information, we will follow the law in determining whether to provide you (and the legal representative listed on your Form G-28, if you submitted one) an opportunity to address that information before we make a formal decision on your case or start proceedings.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

Texas Service Center
 U. S. CITIZENSHIP & IMMIGRATION SVC
 P.O. Box 851488 - DEPT A
 Mesquite TX 75185-1488
 Customer Service Telephone: 800-375-5283



Exhibit O

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
BOSTON, MASSACHUSETTS

IN THE MATTER OF _____)

PEREIRA BRITO, Gilberto)
Respondent _____)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Counsel's Motion to Reopen In Absentia Order of Removal Due to Defective Notice, it is hereby ordered that the motion be

☒ GRANTED ☐ DENIED because:

- ☐ DHS does not oppose the motion.
☐ The respondent does not oppose the motion.
☐ A response to the motion has not been filed with the court.
☐ Good cause has been established for the motion.
☐ The court agrees with the reasons stated in the opposition to the motion.
☐ The motion is untimely per _____
☒ Other: *Apparent lack of notice.*

Deadlines:

- ☐ The application(s) for relief must be filed by _____
☐ The respondent must comply with DHS biometrics instructions by _____

DATE

3/18/19

M. B. Sullivan
Immigration Judge

CERTIFICATE OF SERVICE

This document was served by: ☒ Mail ☐ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☒ Alien's Atty/Rep ☒ DHS

Date: *3/19/19* By: Court Staff *WD*

3

Exhibit P

U.S. Department of Justice
Executive Office for Immigration Review

OMB#1125-0001

**Application for Cancellation of Removal and Adjustment
of Status for Certain Nonpermanent Residents**

**PLEASE READ ADVICE AND INSTRUCTIONS
BEFORE FILLING IN FORM**

PLEASE TYPE OR PRINT

Fee Stamp (Official Use Only)

PART 1 - INFORMATION ABOUT YOURSELF

1) My present true name is: (<i>Last, First, Middle</i>) PEREIRA BRITO, Gilberto		2) Alien Registration (or "A") Number(s): [REDACTED]	
3) My name given at birth was: (<i>Last, First, Middle</i>) PEREIRA BRITO, Gilberto		4) Birth Place: (<i>City and Country</i>) IPATINGA, MINAS GERAIS, BRAZIL	
5) Date of Birth: (<i>Month, Day, Year</i>) [REDACTED]	6) Gender: <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	7) Height: 5'11"	8) Hair Color: BLACK
10) Current Nationality and Citizenship: BRAZIL		11) Social Security Number: [REDACTED]	9) Eye Color: BROWN
14) I currently reside at: ICE DETENTION PLYMOUTH COUNTY CORRECTIONAL <i>Apt. number and/or in care of</i> 26 LONG POND ROAD <i>Number and Street</i> PLYMOUTH <i>City or Town</i> MA 02360 <i>State Zip Code</i>		12) Home Phone Number: [REDACTED]	
		13) Work Phone Number: ()	
15) I have been known by these additional name(s): [REDACTED]			

16) I have resided in the following locations in the United States: (List PRESENT ADDRESS FIRST, and work back in time for at least 10 years.)

Street and Number - Apt. or Room # - City or Town - State - Zip Code	Resided From: (<i>Month, Day, Year</i>)	Resided To: (<i>Month, Day, Year</i>)
ICE DETENTION	03/03/2019	PRESENT

PART 2 - INFORMATION ABOUT THIS APPLICATION

17) I, the undersigned, hereby request that my removal be cancelled under the provisions of section 240A(b) of the Immigration and Nationality Act (INA). I believe that I am eligible for cancellation of removal because: (Check all that apply.)

<input checked="" type="checkbox"/> My removal would result in exceptional and extremely unusual hardship to my:	UNITED STATES CITIZEN	LAWFUL PERMANENT RESIDENT	TEMPORARY STATUS	NO STATUS
<input checked="" type="checkbox"/> spouse, who is a	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> father, who is a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> mother, who is a	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> child/children, who is/are a	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

With the exception of absences described in question #23, I have resided in the United States since:

(*Month, Day, Year*) **04/13/2005**

☐ I, or my child, have been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident spouse or parent.

With the exception of absences described in question #23, I have resided in the United States since:

(*Month, Day, Year*)

Please continue answers on a separate sheet as needed.

(2)

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PART 3 - INFORMATION ABOUT YOUR PRESENCE IN THE UNITED STATES

18) I first arrived in the United States under the name of: (Last, First, Middle)

PEREIRA BRITO, Gilberto

19) I first arrived in the United States on: (Month, Day, Year)

04/13/2005

20) Place or port of first arrival: (Place or Port, City, and State)

RIO GRANDE CITY, TEXAS

21) I: ☐ was inspected and admitted.☐ I entered using my Lawful Permanent Resident card which is valid until

(Month, Day, Year)

☐ I entered using a (Specify Type of Visa) visa which is valid until

(Month, Day, Year)

☒ was not inspected and admitted.☒ I entered without documents. Explain: EWI☒ I entered without inspection. Explain: EWI☐ Other. Explain:22) I applied on (Month, Day, Year) for additional time to stay and it was ☐ granted on

(Month, Day, Year)

and valid until

(Month, Day, Year)

, or ☐ denied on

(Month, Day, Year)

23) Since the date of my first entry, I departed from and returned to the United States at the following places and on the following dates:
(Please list all departures regardless of how briefly you were absent from the United States.)If you have never departed from the United States since your original date of entry, please mark an X in this box: ☒

1	Port of Departure (Place or Port, City and State)	Departure Date (Month, Day, Year)	Purpose of Travel	Destination
	Port of Return (Place or Port, City and State)	Return Date (Month, Day, Year)	Manner of Return	Inspected and Admitted? <input type="checkbox"/> Yes <input type="checkbox"/> No
2	Port of Departure (Place or Port, City and State)	Departure Date (Month, Day, Year)	Purpose of Travel	Destination
	Port of Return (Place or Port, City and State)	Return Date (Month, Day, Year)	Manner of Return	Inspected and Admitted? <input type="checkbox"/> Yes <input type="checkbox"/> No

24) Have you ever departed the United States: a) under an order of deportation, exclusion, or removal? ☐ Yes ☐ Nob) pursuant to a grant of voluntary departure? ☐ Yes ☐ No

PART 4 - INFORMATION ABOUT YOUR MARITAL STATUS AND SPOUSE (Continued on page 3)

25) I am not married: ☐I am married: ☒

26) If married, the name of my spouse is: (Last, First, Middle)

PEREIRA BRITO, Darcy

27) My spouse's name before marriage was:

FRANCE

28) The marriage took place in: (City and Country)

BROCKTON, MA USA

29) Date of marriage: (Month, Day, Year)

10/20/2013

30) My spouse currently resides at:

31) Place and date of birth of my spouse: (City & Country; Month, Day, Year)

STOUGHTON, MA USA

32) My spouse is a citizen of: (Country)

UNITED STATES

33) If your spouse is other than a native born United States citizen, answer the following:

He/she arrived in the United States at: (Place or Port, City and State)

He/she arrived in the United States on: (Month, Day, Year)

His/her alien registration number(s) is: A#

He/she was naturalized on: (Month, Day, Year)

at

(City and State)

34) My spouse ☐ - is ☒ - is not employed. If employed, please give salary and the name and address of the place(s) of employment.

Full Name and Address of Employer	Earnings Per Week (Approximate)
	\$
	\$
	\$

Please continue answers on a separate sheet as needed.

(2)

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PART 4 - INFORMATION ABOUT YOUR MARITAL STATUS AND SPOUSE *(Continued)*

35) I ☒ - have ☐ - have not been previously married: (If previously married, list the name of each prior spouse, the dates on which each marriage began and ended, the place where the marriage terminated, and describe how each marriage ended.)

Name of prior spouse: (Last, First, Middle)	Date marriage began: Date marriage ended:	Place marriage ended: (City and Country)	Description or manner of how marriage was terminated or ended:
[REDACTED]	01/15/2000 06/27/2008		DIVORCE

36) My present spouse ☐ - has ☒ - has not been previously married: (If previously married, list the names of each prior spouse, the dates on which each marriage began and ended, the place where the marriage terminated, and describe how each marriage ended.)

Name of prior spouse: (Last, First, Middle)	Date marriage began: Date marriage ended:	Place marriage ended: (City and Country)	Description or manner of how marriage was terminated or ended:

37) Have you been ordered by any court, or are otherwise under any legal obligation, to provide child support and/or spousal maintenance as a result of a separation and/or divorce? ☐ Yes ☒ No

PART 5 - INFORMATION ABOUT YOUR EMPLOYMENT AND FINANCIAL STATUS

38) Since my arrival into the United States, I have been employed by the following named persons or firms: (Please begin with present employment and work back in time. Any periods of unemployment or school attendance should be specified. Attach a separate sheet for additional entries if necessary.)

Full Name and Address of Employer	Earnings Per Week (Approximate)	Type of Work Performed	Employed From: (Month, Day, Year)	Employed To: (Month, Day, Year)
SELF-EMPLOYED	\$			PRESENT
	\$			
	\$			

39) If self-employed, describe the nature of the business, the name of the business, its address, and net income derived therefrom:

40) My assets (and if married, my spouse's assets) in the United States and other countries, not including clothing and household necessities, are:

Self	Jointly Owned With Spouse
Cash, Stocks, and Bonds..... \$	Cash, Stocks, and Bonds..... [REDACTED]
Real Estate..... \$	Real Estate..... [REDACTED]
Auto (dollar value minus amount owed)..... \$	Auto (dollar value minus amount owed)..... [REDACTED]
Other (describe on line below)..... \$	Other (describe on line below)..... [REDACTED]
TOTAL \$	TOTAL \$

41) I ☐ - have ☒ - have not received public or private relief or assistance (e.g., Welfare, Unemployment Benefits, Medicaid, TANF, AFDC, etc.). If you have, please give full details including the type of relief or assistance received, date for which relief or assistance was received, place, and total amount received during this time:

42) Please list each of the years in which you have filed an income tax return with the Internal Revenue Service:

Please continue answers on a separate sheet as needed.

(3)

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PART 6 - INFORMATION ABOUT YOUR FAMILY (Continued on page 5)

43) I have ³ (Number of) children. Please list information for each child below, include assets and earnings information for children over the age of 16 who have separate incomes:

Name of Child: (Last, First, Middle) Child's Alien Registration Number:	Citizen of What Country: Birth Date: (Month, Day, Year)	Now Residing At: (City and Country) Birth Date: (City and Country)	Immigration Status of Child
			USC
			USC
			USC

44) If your application is denied, would your spouse and all of your children accompany you to your:

Country of Birth - ☐ Yes ☒ No

Country of Nationality - ☐ Yes ☒ No

Country of Last Residence - ☐ Yes ☒ No

If you answered "No" to any of the responses, please explain:

MY WIFE HAS A SERIOUS MENTAL ILLNESS AND PHYSICAL DISORDERS FOR WHICH SHE REQUIRES LONG-TERM TREATMENT HERE IN THE U.S.

45) Members of my family, including my spouse and/or child(ren) ☐ - have ☒ - have not received public or private relief or assistance (e.g., Welfare, Unemployment Benefits, Medicaid, TANF, AFDC, etc.). If any member of your immediate family has received such relief or assistance, please give full details including identity of person(s) receiving relief or assistance, dates for which relief or assistance was received, place, and total amount received during this time:

46) Please give the requested information about your parents, brothers, sisters, aunts, uncles, and grandparents, living or deceased. As to residence, show street address, city, and state, if in the United States; otherwise show only country:

Name: (Last, First, Middle) Alien Registration Number:	Citizen of What Country: Birth Date: (Month, Day, Year)	Relationship to Me: Birth Date: (City and Country)	Immigration Status of Listed Relative
 A#:	BRAZIL	FATHER BRAZIL	UNK
Complete Address of Current Residence, if Living: UNK			
 A#:	BRAZIL	MOTHER BRAZIL	DECEASED
Complete Address of Current Residence, if Living:			

Please continue answers on a separate sheet as needed.

(4)

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PART 6 - INFORMATION ABOUT YOUR FAMILY (Continued)

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 47-50 MUST BE ANSWERED.

47) If your parent is not a citizen of the United States, give the date and place of arrival in the United States including full details as to the date, manner, and terms of admission into the United States:

48) My father ☐ - is ☐ - is not employed. If employed, please give salary and the name and address of the place(s) of employment.

Full Name and Address of Employer	Earnings Per Week (Approximate)
_____	\$ _____

49) My mother ☐ - is ☐ - is not employed. If employed, please give salary and the name and address of place(s) of employment.

Full Name and Address of Employer	Earnings Per Week (Approximate)
_____	\$ _____

50) My parent's assets in the United States and other countries not including clothing and household necessities are:

Assets of father consist of the following:

Cash, Stocks, and Bonds..... \$ _____

Real Estate..... \$ _____

Auto (dollar value minus amount owed)..... \$ _____

Other (describe on line below)..... \$ _____

TOTAL \$ _____

Assets of mother consist of the following:

Cash, Stocks, and Bonds..... \$ _____

Real Estate..... \$ _____

Auto (dollar value minus amount owed)..... \$ _____

Other (describe on line below)..... \$ _____

TOTAL \$ _____

PART 7 - MISCELLANEOUS INFORMATION (Continued on page 6)

51) I ☐ - have ☒ - have not entered the United States as a crewman after June 30, 1964.

52) I ☐ - have ☒ - have not been admitted as, or after arrival in the United States acquired the status of, an exchange alien.

53) I ☒ - have ☐ - have not submitted address reports as required by section 265 of the Immigration and Nationality Act.

54) I ☐ - have ☒ - have never (either in the United States or in any foreign country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance (including, but not limited to, traffic violations or driving incidents involving alcohol). (If answer is in the affirmative, please give a brief description of each offense including the name and location of the offense, date of conviction, any penalty imposed, any sentence imposed, and the time actually served. You are required to submit documentation of any such occurrences.)

55) Have you ever served in the Armed Forces of the United States? ☐ Yes ☒ No. If "Yes" please state branch (Army, Navy, etc.) and service number: _____

Place of entry on duty: (City and State) _____

Date of entry on duty: (Month, Day, Year) _____

Date of discharge: (Month, Day, Year) _____

Type of discharge: (Honorable, Dishonorable, etc.) _____

I served in active duty status from: (Month, Day, Year) _____

to (Month, Day, Year) _____

56) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States?

☐ Yes ☒ No

Please continue answers on a separate sheet as needed.

(5)

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PART 7 - MISCELLANEOUS INFORMATION (Continued)

57) Have you ever deserted from the military or naval forces of the United States while the United States was at war? ☐ Yes ☒ No

58) If male, did you register under the Military Selective Service Act or any applicable previous Selective Service (Draft) Laws? ☐ Yes ☒ No
If "Yes," please give date, Selective Service number, local draft board number, and your last draft classification: _____

59) Were you ever exempted from service because of conscientious objection, alienage, or any other reason? ☐ Yes ☒ No

60) Please list your present or past membership in or affiliation with every political organization, association, fund, foundation, party, club, society, or similar group in the United States or any other place since your 16th birthday. Include any foreign military service in this part. If none, write "None." Include the name of the organization, location, nature of the organization, and the dates of membership.

Name of Organization	Location of Organization	Nature of Organization	Member From: (Month, Day, Year)	Member To: (Month, Day, Year)

61) Have you ever:

- ☒ Yes ☐ No been ordered deported, excluded, or removed?
☐ Yes ☒ No overstayed a grant of voluntary departure from an Immigration Judge or the Department of Homeland Security (DHS), formerly the Immigration and Naturalization Service (INS)?
☐ Yes ☒ No failed to appear for removal or deportation?

62) Have you ever been:

- ☐ Yes ☒ No a habitual drunkard?
☐ Yes ☒ No one whose income is derived principally from illegal gambling?
☐ Yes ☒ No one who has given false testimony for the purpose of obtaining immigration benefits?
☐ Yes ☒ No one who has engaged in prostitution or unlawful commercialized vice?
☐ Yes ☒ No involved in a serious criminal offense and asserted immunity from prosecution?
☐ Yes ☒ No a polygamist?
☐ Yes ☒ No one who brought in or attempted to bring in another to the United States illegally?
☐ Yes ☒ No a trafficker of a controlled substance, or a knowing assister, abettor, conspirator, or colluder with others in any such controlled substance offense (not including a single offense of simple possession of 30 grams or less of marijuana)?
☐ Yes ☒ No inadmissible or deportable on security-related grounds under sections 212(a)(3) or 237(a)(4) of the INA?
☐ Yes ☒ No one who has ordered, incited, assisted, or otherwise participated in the persecution of an individual on account of his or her race, religion, nationality, membership in a particular social group, or political opinion?
☐ Yes ☒ No a person previously granted relief under sections 212(c) or 244(a) of the INA or whose removal has previously been cancelled under section 240A of the INA?

If you answered "Yes" to any of the above questions, explain: PENDING MOTION TO REOPEN IN ABSENTIA REMOVAL BASED ON DEFECTIVE NOTICE.

Please continue answers on a separate sheet as needed.

(6)

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If yes, can you arrange a trip outside the United States to obtain an immigrant visa? ☒ Yes ☐ No If no, please explain:

PART 8 - SIGNATURE OF PERSON PREPARING FORM, IF OTHER THAN APPLICANT

I declare that I have prepared this application at the request of the person named in Part 1, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in a language the applicant speaks fluently for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form EOIR-42B may subject me to civil penalties under 8 U.S.C. §1324c.

Date: _____

Address of Preparer: (Number and Street, City, State, Zip Code)

()

PART 9 - SIGNATURE

**APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE
AN IMMIGRATION JUDGE**

I swear or affirm that I know the contents of this application that I am signing, including the attached documents and supplements, and that they are all true to the best of my knowledge, taking into account the correction(s) numbered _____ to _____, if any, that were made by me or at my request.

(Signature of Applicant or Parent or Guardian)

Subscribed and sworn to before me by the above-named applicant at _____

Immigration Judge

Date (Month, Day, Year)

PART 10 - PROOF OF SERVICE

I hereby certify that a copy of the foregoing Form EOIR-42B was: ☐ - delivered in person ☐ - mailed first class, postage prepaid

on _____ to the Assistant Chief Counsel for the DHS (U.S. Immigration and Customs Enforcement - ICE)
(Month, Day, Year)

at _____
(Number and Street, City, State, Zip Code)

Signature of Applicant (or Attorney or Representative)

Please continue answers on a separate sheet as needed.

(8)

Form EOIR-42B
Revised July 2016

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EOIR 42B Continuation page, Part I, Question 16

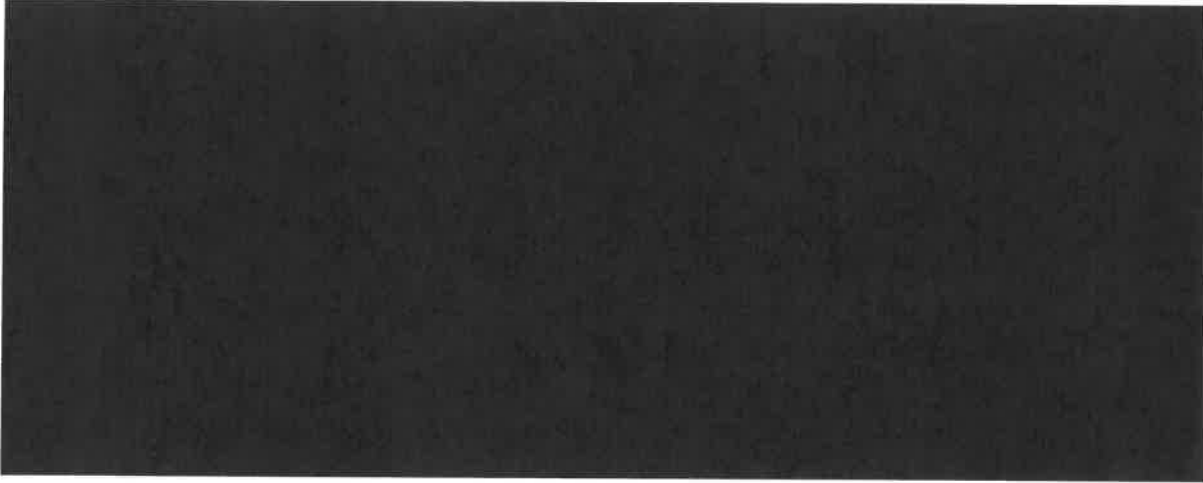


Exhibit Q

PEDIATRIC ASSOCIATES INC., of BROCKTON

PEDIATRICASSOCIATESOFBROCKTON.COM
(508) 584-1234



March 12, 2019

Peter D. Rappo, MD
Nancy L. Chapin, MD
Kevin J. Murphy, MD
David S. Chung, MD
Aziza Zaman, MD
Yevgeniya Fabrikant, MD
Yonatan E. Weinberg, MD
Victoria J. Tan, MD
Anshu Kumari, MD
Margaret F. Larrumbide, MD
Mary Ellen Dickinson, PNP

To whom it may concern;

Re: Pereira Brito Family

[REDACTED] and [REDACTED]
Pereira Brito are patients mine here at Pediatric Associates Inc of Brockton. Their father is Gilberto Pereira Brito who lives with them and their mother. He is deeply involved with his family and provides emotional and financial support to the family. Please allow Mr Pereira Britto to remain in the United States because without his emotional and financial support his family would suffer tremendously.

If you have any further questions or concerns, please do not hesitate to call me at 508 584 1234.

Sincerely,


Nancy L Chapin, M.D.
NLC/isa

370 Oak Street, Ste A
Brockton, MA 02301
Fax # 508 584-0230

291 E. Center Street
West Bridgewater, MA 02379
Fax # 508 584-6934

692 Main Street
Hanson, MA 02341
Fax# 781 294-4357

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To: Honorable Judge:

Please allow Gilberto Pereira Brito, to stay in the United States,
to take care of his wife, and three children.

Jacqueline A. Westfield
Theresa Westfield
C. Rogers
L. Poyla
Jane E. Stevens
Robert McFie
Shene McFie
Maureen & Chaz
Anne White, Sarah
Tanya McFie
Bob McFie
Mark E. Rogers
Justin Rogers
Brenda Brooks
Marie A. Lane

Exhibit R

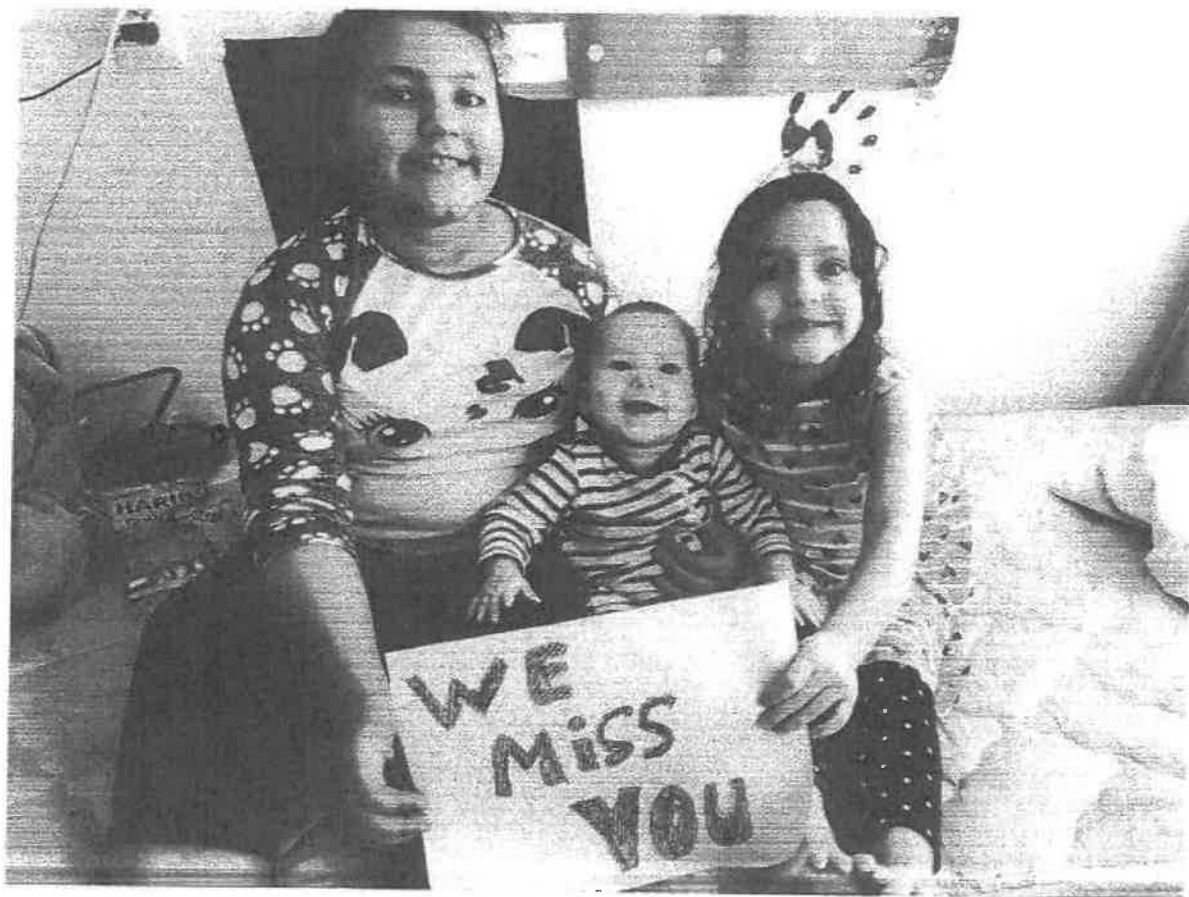


Exhibit S

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

Law Office of Sidra Vitale
Vitale, Sidra
P.O. Box 692148
Quincy, MA 02269

In the matter of
PEREIRA-BRITO, GILBERTO

File [REDACTED]

DATE: May 23, 2019

Unable to forward - No address provided.

Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

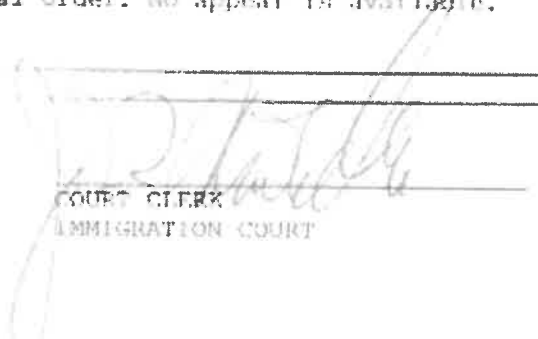
Attached is a copy of the decision of the Immigration Judge as the result of your failure to appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

Attached is a copy of the decision of the Immigration Judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

Attached is a copy of the decision of the Immigration Judge relating to a Credible Fear Review. This is a final order. No appeal is available.

Other: Read Memo


COURT CLERK
IMMIGRATION COURT

cc:

ff

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS**

IN THE MATTER OF:

PEREIRA-BRITO, Gilberto

Respondent

**In Bond Proceedings
DETAINED**

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"); Alien who, is present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATION: Motion for Custody Redetermination

ON BEHALF OF RESPONDENT

Sidra Vitale, Esq.
Law Office of Sidra Vitale
P.O. Box 692148
Quincy, MA 02269

ON BEHALF OF DHS

Justine Bavaro, Esq.
Assistant Chief Counsel
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
15 New Sudbury Street, Room 425
Boston, Massachusetts 02203

**MEMORANDUM CONCERNING THE APRIL 4, 2019,
DECISION OF THE IMMIGRATION COURT**

This memorandum, submitted pursuant to 8 C.F.R. § 1236.1(d) (2019), explains why the Boston Immigration Court ("Court") denied the Respondent's request for a change in custody status.

I. PROCEDURAL HISTORY

On May 7, 2005, the Department of Homeland Security ("DHS") initiated removal proceedings against the Respondent, Gilberto Pereira-Brito, through the filing of a Notice to Appear ("NTA") with the Court. Exh. 1. On April 4, 2019, the Court convened for a custody redetermination hearing at the Respondent's request. At the hearing, the Court was unable to find that the Respondent met his burden of proof to show that he does not pose a danger to persons or property. Further, even if he had, he has not demonstrated that the risk of flight present in his case could be ameliorated by posting of bond. Accordingly, the Court denied his request for a change in custody status.

II. APPLICABLE LAW

The Court may review the custody status of an alien in removal proceedings, provided that the alien is not subject to mandatory detention pursuant to section 236(c) of the Act. INA § 236(a) (2019). When reviewing an alien's custody status, the Court may order DHS to (1) continue to detain the alien or (2) release the alien on either a bond of not less than \$1,500.00 or conditional parole. *Id.* For the Court to order an alien's release, the alien must establish to the satisfaction of the Court that he does not pose a danger to persons or property, is not a threat to national security, and does not pose a flight risk. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (relying on *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999)); *see also* 8 C.F.R. §§ 1003.19(h)(3), 1236.1(c)(8).

The Board of Immigration Appeals ("BIA" or "Board") has consistently held that the following factors are significant in a custody redetermination:

1. Fixed address in the United States. *Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1979);
2. Length of residence in the United States. *Matter of Shaw*, 17 I&N Dec. 177, 178 (BIA 1979);
3. Family ties in the United States, particularly those which can confer immigration benefits on the alien. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of Patel*, 15 I&N Dec. at 667;
4. Employment history in the United States, including length and stability. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of Patel*, 15 I&N Dec. at 667;
5. Immigration record and eligibility for relief from removal. *Matter of Andrade*, 19 I&N Dec. 488, 491 (BIA 1987); *Matter of Shaw*, 17 I&N Dec. at 178;
6. Attempts to escape from authorities or other flight to avoid prosecution. *Matter of San Martin*, 15 I&N Dec. 167, 169 (BIA 1974);
7. Prior failures to appear for court proceedings. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of San Martin*, 15 I&N Dec. at 169; and
8. Criminal record, particularly if such record indicates consistent disrespect for the law. *Matter of Andrade*, 19 I&N Dec. at 490-91.

The Court may base a custody or bond determination upon any information that is available or that is presented by the alien or DHS. 8 C.F.R. § 1003.19(d). It is the responsibility of the Court and parties to ensure that the bond record establishes the nature and substance of the information considered. *Matter of Adeniji*, 22 I&N Dec. at 1115.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

As the Respondent's removal proceedings are ongoing and as DHS did not allege that he is subject to mandatory detention, the Court has jurisdiction to consider the Respondent's request that he be released from custody. INA § 236(a), (c). To establish that he should be released, the Respondent must prove to the satisfaction of the Court that he neither poses a danger to the community nor is a risk of flight. *See Matter of Guerra*, 24 I&N Dec. at 40; *see also* 8 C.F.R. §§

1003.19(h)(3), 1236.1(c)(8). Although the Respondent admitted to his aged criminal history and testified to taking measures to rectify his actions, the Respondent failed to provide the Court with his criminal dockets. As such, the Respondent was unable to demonstrate the exact scope of his criminal activity, or meet his burden to prove that he does not pose a danger to the community. Even assuming that the Respondent was able to meet his burden of proof to show that he does not pose a danger the community.

The Court acknowledged the Respondent has been in the United States for over a decade, has a fixed address, and has existing family ties. *Matter of Shaw*, 17 I&N Dec. at 178; *Matter of Patel*, 15 I&N Dec. at 667. However, the Court is troubled by the Respondent's inability to complete his prior probation sentences. A continuance without a finding was entered against the Respondent for the charge of operating under the influence ("OUI") and he was sentenced to probation. The Respondent did not complete probation and defaulted on his sentence. The Respondent was also charged with possession of marijuana, a charge that was later dismissed, and defaulted on the resulting probation sentence. The Respondent did not provide any explanation as to why he did not complete his probation sentences. Accordingly, the Court found that the Respondent's inability to complete probation and his propensity to commit further violations of criminal law was indicative of his risk of dangerousness to persons and property. As the Supreme Court has noted, driving motor vehicles under the influence of alcohol is a highly dangerous activity. *Begay v. United States*, 553 U.S. 137 (2008).

As to risk of flight, the Respondent has not demonstrated that he has a strong case for eligibility for relief from removal. While he has indicated he intends to seek cancellation of removal, he has not presented any evidence from which this Court could determine that he would be statutorily eligible for such relief, in that he has not established that he has been present in the United States for a 10-year period prior to the date of service of his Notice to Appear and subsequent hearing notice.

Thus, upon consideration of the record, the Court ruled that the Respondent did not meet his burden to demonstrate that he neither poses a danger to the community nor is a risk of flight. See *Matter of Guerra*, 24 I&N Dec. at 38. Accordingly, the Court ordered that there be no change in the Respondent's custody status.

May 21, 2019
Date

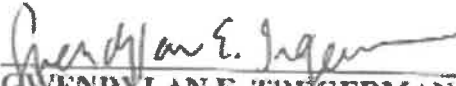

WENDY LAN E. TRIGGERMAN
United States Immigration Judge

Exhibit T

Sidra Vitale, Esq.
The Law Office of Sidra Vitale

P.O. Box 692148
Quincy, MA 02269
(857) 540-1818 (telephone)
(857) 241-3095 (facsimile)

BY OVERNIGHT MAIL

3 May 2019

Clerk's Office
Board of Immigration Appeals
5107 Leesburg Pike Ste 200
Falls Church, VA 22041

RE: Gilberto Pereira Brito
[REDACTED]

Dear Clerk:

I am counsel for the above individual pursuant to the enclosed E-27 Entry of Appearance. Enclosed please find Mr. Pereira Brito's E-26 Notice of Appeal, copy of the decision of the immigration judge, and fee.

Sincerely yours,



Sidra Vitale, Esq.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB#1125-0005

Notice of Entry of Appearance as Attorney or
Representative Before the Board of Immigration Appeals

(Type or Print) NAME AND ADDRESS OF REPRESENTED PARTY			ALIEN ("A") NUMBER (Provide A- number of the party represented or the visa beneficiary in this case.)		
PEREIRA BRITO			GILBERTO		
(First) (Middle Initial) (Last)			USCIS Visa Appeal (Provide beneficiary name)		
ICE CUSTODY/PCCF 28 LONG ROAD			Fine (Provide fine number)		
(Number and Street) (Apt. No.)			Disciplinary case (Provide docket number)		
PLYMOUTH			MA 02380		
(City) (State) (Zip Code)					

Attorney or Representative (please check one of the following):

☒ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following state(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia (use additional space on reverse side if necessary) and I am not subject to any order disbaring, suspending, enjoining, restraining or otherwise restricting me in the practice of law in any jurisdiction (if subject to such an order, do not check this box and explain on reverse).

Full Name of Court: Mass Supreme Judicial Court Bar Number (if applicable): 669675

☐ I am a representative accredited to appear before the Executive Office for Immigration Review as defined in 8 C.F.R. § 1292.1(a)(4) with the following recognized organization:

☐ I am a law student or law graduate of an accredited U.S. law school as defined in 8 C.F.R. § 1292.1(a)(2).

☐ I am a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3).

☐ I am an accredited foreign government official, as defined in 8 C.F.R. § 1291.1(a)(5), from _____ (country).


☐ I am a person who was authorized to practice on December 23, 1952, under 8 C.F.R. § 1292.1(b).

Attorney or Representative (please check one of the following):

☒ I hereby enter my appearance as attorney or representative for, and at the request of, the party named above.

☐ EOIR has ordered the provision of a Qualified Representative for the party named above and I appear in that capacity.

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representations before the Board of Immigration Appeals. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE	EOIR ID NUMBER	DATE
	OA896318	05/03/2019

NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS

Name: Steven (First) Vitale (Last)

Address: P.O. BOX 692143 (Number and Street)

QUINCY (City) MA (State) 02260 (Zip Code)

Telephone: 857-540-1818 Facsimile: 857-241-3095 Email: SVITALE@VITALE-LAW.COM

☐ Check here if new address

Indicate Type of Appearance:

☒ Primary Attorney/Representative ☐ Non-Primary Attorney/Representative

I am providing pro bono representation. Check one: ☒ yes ☐ no

Proof of Service

I (Name) SIDRA VITALE, ESQ mailed or delivered a copy of this Form EOIR-27 on (Date) 05/04/2019
to the ☒ DHS (U.S. Immigration and Customs Enforcement - ICE) at 15 NEW SUDBURY ST 425, BOSTON, MA 02203
☐ DHS (U.S. Citizenship and Immigration Services - USCIS) at _____
☐ EOIR Disciplinary Council at _____


Signature of Person Serving

APPEARANCES - An appearance for each represented party shall be filed on a separate Form EOIR-27 by the attorney or representative appearing in each appeal or motion to reopen or motion to reconsider before the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)), even though the attorney or representative may have appeared in the case before the Immigration Judge or the U.S. Citizenship and Immigration Services. If information is omitted from the Form EOIR-27 or it is not properly completed, the appearance may not be recognized and the accompanying filing may be rejected. When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions in 8 C.F.R. in 8 C.F.R. § 1003.102. Thereafter, substitution or withdrawal may be permitted upon approval by the Board of a request of the attorney or representative of record in accordance with *Matter of Rosales*, 19 I&N Dec. 635 (1983). Please note that appearances for limited purposes are not permitted. See *Matter of Velazquez*, 19 I&N Dec. 377, 384 (BIA 1986). Attorneys and Accredited Representatives (with full accreditation) must first update their address in eRegistry before filing a Form EOIR-27 that reflects a new address.

FREEDOM OF INFORMATION ACT - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is in 28 C.F.R. §§ 16.1-16.11 and appendices. For further information about requesting records from EOIR under the Freedom of Information Act, see *How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review*, available on EOIR's website at <http://www.justice.gov/eoir>.

PRIVACY ACT NOTICE - The information requested on this form is authorized by 5 U.S.C. § 1362 and 8 C.F.R. § 1003.3 in order to enter an appearance to represent a party before the Board of Immigration Appeals. The information you provide is mandatory and required to enter an appearance. Failure to provide the requested information will result in an inability to represent a party or receive notice of actions in a proceeding. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notice, EOIR-001, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11, 2004), or its successors and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49257 (September 1999).

CASES BEFORE EOIR - Automated information about cases before EOIR is available by calling (800) 898-7180 or (240) 314-1500.

ADDITIONAL INFORMATION:

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

U.S. Department of Justice
 Executive Office for Immigration Review
 Board of Immigration Appeals

OMB# 1125-0002
 Notice of Appeal from a Decision of an
 Immigration Judge

Stamp Check or Money Order Here. Include Name(s) and
 "A" Number(s) on the face of the check or money order.

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

Gilberto Pereira Brito [REDACTED]

For Official Use Only

! WARNING: Names and "A" Numbers of everyone appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am ☒ the Respondent/Applicant ☐ DHS-ICE (Mark only one box.)
3. I am ☒ DETAINED ☐ NOT DETAINED (Mark only one box.)
4. My last hearing was at Boston, MA (Location, City, State)

5. What decision are you appealing?

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

- ☐ I am filing an appeal from the Immigration Judge's decision *in merits proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated _____.
- ☒ I am filing an appeal from the Immigration Judge's decision *in bond proceedings* dated 04/04/2019. (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☐ Yes. ☐ No.)
- ☐ I am filing an appeal from the Immigration Judge's decision *denying a motion to reopen or a motion to reconsider* dated _____.

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

Form EOIR-26
 Revised Oct. 2016

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

A default warrant issued over 10 years ago, cannot, without more, constitute sufficient evidence of flight risk or danger to the community to warrant denial of bond.

** please see attachment and forthcoming brief **

(Attach additional sheets if necessary)


! **WARNING:** You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☒ No
8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☒ Yes ☐ No

! **WARNING:** If you mark "Yes" in item #7, you should also include in your statement above why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule..

9.  **SIGN
HERE**


Signature of Person Appealing
(or attorney or representative)

05/03/2019

Date

Form EOIR-26
Revised Oct. 2016

10.

Mailing Address of Respondent(s)/Applicant(s)
GILBERTO PEREIRA BRITO
(Name)
PCCF, 26 LONG POND ROAD
(Street Address)
(Apartment or Room Number)
PLYMOUTH, MA 02360
(City, State, Zip Code)
508-830-8200
(Telephone Number)

11.

Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)
SIDRA VITALE, ESQ.
(Name)
PO BOX 692148
(Street Address)
(Suite or Room Number)
QUINCY, MA 02269
(City, State, Zip Code)
857-540-1818
(Telephone Number)

NOTE: You must notify the Board within five (5) working days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BLA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

12.

PROOF OF SERVICE (You Must Complete This)

I SIDRA VITALE, ESQ (Name) mailed or delivered a copy of this Notice of Appeal
 on 05/04/2019 (Date) to DHS OFFICE OF CHIEF COUNSEL (Opposing Party)
 at JFK FED BLDG, 15 NEW SUDBURY ST RM 425, BOSTON, MA 02203 (Number and Street, City, State, Zip Code)

 **SIGN HERE**

 Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- ☐ Read all of the General Instructions
- ☐ Provided all of the requested information
- ☐ Completed this form in English
- ☐ Provided a certified English translation for all non-English attachments
- ☐ Signed the form

- ☐ Served a copy of this form and all attachments on the opposing party
- ☐ Completed and signed the Proof of Service
- ☐ Attached the required fee or Fee Waiver Request
- ☐ If represented by attorney or representative, attach a completed and signed EOIR-27

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BOSTON, MA

FILE: [REDACTED]

IN THE MATTER OF:

PEREIRA-BRITO, GILBERTO

RESPONDENT

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE
WITH RESPECT TO CUSTODY

Request having been made for a change in the custody status of respondent pursuant to 8 CFR 236.1(c), and full consideration having been given to the representations of the Department of Homeland Security and the respondent, it is hereby

X ORDERED that the request for a change in custody status be denied.

_____ ORDERED that the request be granted and that respondent be:

_____ released from custody on his own recognizance

_____ released from custody under bond of \$ _____

X OTHER Book 19/11/19

Copy of this decision has been served on the respondent and the Department of Homeland Security.

APPEAL: waived — reserved due May 6, 2019

BOSTON — BOSTON DETAINED

Date: 4

Gwendylan E. Tregerman
Immigration Judge //

XS

Gilberto Pereira Brito, [REDACTED]
Continuation page, E-26 Notice of Appeal

Question 6, Reason(s) for this Appeal:

There is Scant Evidence, Insufficient to Meet Burden to Show Flight Risk

A default warrant issued over 10 years ago, cannot, without more, constitute sufficient evidence of flight risk or danger to the community to warrant denial of bond. The government should be required to bear the burden of proving that Respondent is a danger or flight risk, and that no condition or combination of conditions would mitigate the dangerousness or risk of flight. *See Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 694 (D. Mass. 2018); *Martinez v. Decker*, C.A. No. 18-6527, 2018 WL 5023946, at *5 (S.D.N.Y. Oct. 17, 2018). The Fifth Amendment's Due Process clause mandates: "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Freedom from imprisonment, i.e. government custody, detention, or other forms of physical restraint, "lies at the heart of the liberty [the Due Process] Clause protects." *Zadyvdas v. Davis*, 533 U.S. 678, 690 (2001). Therefore, in actions to deprive a person of his or her liberty, "the party who seeks the law's intervention is the party who bears the burden of proof." Mary Holper, *The Best of Burden in Immigration Bond Hearings*, 67 Case W. Res. L. Rev. 75, 112 (2016).

This is especially true in the context of detention pending deportation, where it is the government who seeks to upset the legal status quo and restrain the liberty of a noncitizen, "who otherwise has the right to freely live in this country," as their removability has not been determined. *Id.* at 117. Thus, requiring Respondent to prove he "is not dangerous and not a flight risk at a bond hearing violates the Due Process Clause." *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018).

In addition, immigration detention hearings are civil proceedings and not considered punitive. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 594 (1952) ("Deportation, however severe its consequences, has been consistently classified as a civil rather than a criminal procedure."). Pursuant

to 8 C.F.R. § 241.4(d)(1), the standard for continued detention in immigration proceedings the same as for pre-trial detention—whether the alien will constitute a danger to the community or is a flight risk. In these hearings, dangerousness or flight risk must be shown by clear and convincing evidence, and the preponderance of the evidence standard is insufficient to comport with Due Process. David Cole, *In Aid of Removal: Due Process Limits on Immigration Detention*, 51 Emory L.J. 1003, 1011-21 (2002) (exploring due process limitations on detention). It is improper to ask “the individual . . . to share equally with society the risk of error when the possible injury to the individual is significantly greater than any possible harm to the state.” *Addington v. Texas*, 441 U.S. 418, 427 (1979). The government must “impress the factfinder with the importance of the decision and thereby perhaps reduce the chances that inappropriate commitments will be ordered.” *Id.* Therefore, civil detention is forbidden unless the government has proved an adequate basis for detention to a neutral arbiter by clear and convincing evidence. U.S. Const., Amend. IV & V; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

Therefore, Respondent cannot be detained unless the government articulates a statutory basis for detention and then proves by clear and convincing evidence: (1) the predicate facts necessary to trigger the identified statutory basis for detention; (2) that Respondent is a danger to others or a flight risk; and (3) that no condition or combination of conditions will reasonably assure his future appearance and the safety of the community. The burden is theirs because, “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).

In this case, default warrant(s) issued over a decade ago are simply insufficient to demonstrate that Respondent is a flight risk today, especially when viewed in conjunction with his deep roots in the community, his role as primary breadwinner for his family, comprised of his disabled U.S. citizen wife, who does not work, and their three U.S. citizen children, ages 10, 4, and under 1 year old, as detailed in the evidence submitted in support of Respondent's bond request.

Ability to Pay

Additionally, failure to consider a detainee's financial circumstances could create a significant risk that the individual would be "needlessly deprived of the fundamental right to liberty." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). The Immigration Judge (IJ) Benchbook lists ability to pay as a factor that should be considered in bond hearings, and "according to the government, consideration of financial circumstances is already 'implicitly' required." *Hernandez*, 872 F.3d at 994. The purpose of conditioning release on the posting of a bond is to incentivize detainees to appear in the future, so it is reasonable to consider financial circumstances. *Id.* at 991, 997 (determining it was appropriate to uphold an injunction requiring government to consider financial ability to pay bond). An IJ's failure to consider ability to pay and subsequent imposition of a bond outside of the detainee's reach is essentially a denial of bond. *Abdi v. Nielsen*, 287 F.Supp.3d 327, 338 (W.D.N.Y. 2018). Therefore, IJs should consider ability to pay and alternative conditions of release. *Abdi*, 287 F.Supp.3d at 334, 338.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA**

IN THE MATTER OF _____)

PEREIRA BRITO, Gilberto)
Respondent _____)

_____)
IN REMOVAL PROCEEDINGS

CERTIFICATE OF SERVICE

I, Sidra Vitale, Esq., certify that I have served a copy of this

Notice of Appeal and initial supporting documents;

on

DHS, Chief Counsel
JFK Federal Bldg
15 New Sudbury St Rm 425
Boston, MA 02203

by mail delivery, on the 4th day of May, 2019.



Sidra Vitale, Esq.
Law Office of Sidra Vitale
P.O. Box 692148
Quincy, MA 02269
svitale@vitale-law.com
(857) 540-1818
(857) 241-3095 (fax)

Exhibit U

Exhibit Intentionally Excluded

Exhibit V

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
BOSTON, MASSACHUSETTS**

IN THE MATTER OF)

PEREIRA BRITO, Gilberto)
Respondent)[REDACTED]
IN REMOVAL PROCEEDINGS**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of Counsel's Motion for Bond Redetermination, it is hereby ordered that the motion be

☐ GRANTED ☒ DENIED because:

- ☐ DHS does not oppose the motion.
☐ The respondent does not oppose the motion.
☐ A response to the motion has not been filed with the court.
☐ Good cause has been established for the motion.
☐ The court agrees with the reasons stated in the opposition to the motion.
☐ The motion is untimely per _____.
☒ Other: The court found the respondent did not overcome his risk of flight due to several defaults the court found significant. The court finds that the respondent's circumstances have not changed materially since the last bond hearing held on 4-4-19 See 8 C.F.R. 1003.19(e)

Deadlines:

- ☐ The application(s) for relief must be filed by _____
☐ The respondent must comply with DHS biometrics instructions by _____

6-10-19
DATE

[Signature]
Gwendolyn Frogerman
Immigration Judge
Jennifer M. Kuhn

CERTIFICATE OF SERVICE

This document was served by: ☒ Mail ☐ Personal Service
 To: ☐ Alien ☐ Alien c/o Custodial Officer ☒ Alien's Atty/Rep ☒ DHS

Date: 6/11/19 By: Court Staff UD

CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2019, the above-captioned document was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants.

/s/ Susan M. Finegan

Susan M. Finegan